IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K. PADMANABHAN NAIR

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

AS.No. 30 of 2001(F)

OS.463/1993 of PRINCIPAL SUB COURT,KOLLAM
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APPELLANT - DEFENDANT NO.2:

DR. SASIKUMAR, WORKING AT MAVELIKKARA GOVT. HOSPITAL, MAVELIKKARA, EARLIER WORKING AT TALUK HEAD QUARTERS GOVT. HOSPITAL, KARUNAGAPPALLY.

BY ADVOCATE SHRI V. CHITAMBARESH
SRI.T.C.SURESH MENON

RESPONDENTS - PLAINTIFF - DEFENDANTS 1 & 3:
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1. KUNJAYYAPPAN, AGED 52 YEARS, S/O. RAMAN, RESIDING AT ASHA BHAVAN, ARINALLOOR, MYNAGAPPALLY, KOLLAM.

2. THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. THE DIRECTOR OF HEALTH SERVICE, DIRECTORATE OF HEALTH SERVICES, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SHRI L.G. SURESH BABU
BY ADVOCATE SHRI C.J. JOY R1

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 17.8.2007 ALONG WITH AS NO. 296 OF 2001 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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A.S. NO. 30 OF 2001
AND
A.S. NO. 296 OF 2001

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Dated this the 17th day of August, 2007

J U D G M E N T

These two appeals arise from a decree and judgment passed in O.S. No.463 of 1993 on the file of the Prl. Sub Court, Kollam. A.S. No.30 of 2001 is filed by the second defendant and A.S. No.296 of 2001 is filed by the plaintiff in the aforesaid suit. Suit was for damages. Plaintiff has filed the appeal claiming enhancement of compensation. For the sake of convenience the parties will be referred to as arrayed in the plaint.

2. Plaintiff is an Ex-serviceman. On 8.2.1992, a dog bite him. He went to the Taluk Headquarters Hospital, Karunagappally on 13.2.1992 for treatment. The second defendant was working as a doctor in the said hospital. Second defendant examined the plaintiff on 13.2.1992 and advised him to have a course of 16 antirabies injections, as a preventive measure to avert rabies. Fourteen injections were

given at a stretch, one injection every day. Thereafter a booster injection was given on the 7th day. The second booster injection was given on the 14th day. The medicines used for injections were taken from the medicine stocked in the hospital which was supplied by the first defendant State. After few days of the completion of the course of injections plaintiff noticed numbness to both of his legs. He consulted the second defendant who prescribed Neurobion, two tablets daily. Subsequently, the plaintiff was treated at Sankar Shashtyabdapoorthi Memorial Hospital (for short Sanker's hospital) at Kollam and at Medical College Hospital, Thiruvananthapuram. The plaintiff filed the suit claiming Rupees One lakh on the following averments.

3. Plaintiff felt great difficulty in walking and later he had to drag his left leg since there was absolutely no movement. His body condition became worse. There was difficulty in passing urine. Impotency was developed. The aforesaid complications developed due to the defect in the medicine injected to the plaintiff from the hospital and also due to the sheer negligence and carelessness on the part of the second defendant in treating the plaintiff. The plaintiff

reported the matter to the second defendant, but he did not bother to attend the plaintiff and treated him in a casual manner. Plaintiff's condition deteriorated further and he went to Sanker's hospital on 22.4.1992 for better treatment. He was treated in that hospital as an inpatient for about 42 days. Since there was no improvement in the condition of the plaintiff, he was referred to the Medical College Hospital, Thiruvananthapuram, on 3.6.1992. He was admitted in the Medical College Hospital and was under treatment there till 17.6.1992. Even on the date of filing of the suit he was undergoing treatment from the Medical College and was unable to walk without the help of somebody and the doctors who treated him suggested that there was no possibility of any improvement. The plaintiff is still in a paralised condition. Plaintiff had completed 16 years of service in the Army and he was having a well built nourished healthy body. After his retirement from the Army he joined the Food Corporation of India. From 26.10.1987 onwards he was working as a Security Officer. He was drawing a monthly salary of Rs.4,000/-. Plaintiff could have continued his service upto the age of 58, but due to the physical conditions, he was not in a

position to complete that period. The plaintiff calculated a sum of Rs.3.25 lakhs as compensation but limited his claim to Rs.1,00,000/- with 18% interest.

4. First defendant, State of Kerala, filed written statement admitting the fact that the plaintiff consulted the second defendant on 13.2.1992 alleging that a dog bite him on 8.2.1992. It was also admitted that doctor advised him to take a course of 16 injections, 14 injections at a stretch one each every day and two booster injections, one on the 7th day and the other on the 14th day of the first course of 14 injections. It was also admitted that the medicine used was the antirabies vaccine duly supplied from the Public Health Laboratory. It was contended that second defendant had treated the plaintiff with reasonable degree of skill and care and all precautions were taken while he was under the doctor's treatment. No complications regarding the injections was noticed by the doctor when the plaintiff met the doctor on several times. The averment that the second defendant treated the plaintiff casually and negligently was denied. It was contended that after administering the injections plaintiff was advised not to consume alcohol and to

avoid heavy work and late nights. It was also contended that second defendant came to know about the admission of the plaintiff in Sanker's hospital only when he received the suit notice. It was contended that after administering the injections plaintiff met the second defendant only on 18.4.1992 and on examining the plaintiff second defendant had advised him to take neurotropic vitamins and also to report if there was any progress of any symptoms. It was contended that the plaintiff never came back to the hospital. It was contended that when neurotropic medicines are administered, as a side effect, there is a possibility of sudden neuroparalytic catastrophy coincident with hypersensitivity type of reaction. It was averred that the possibility is 1:1000 or 1:10000 for such vaccination. It was contended that it occurs as a result of sensitisation of the patient due to some factors present in brain tissue.

5. Second defendant, the doctor who administered antirabies injections on the plaintiff, filed a separate written statement. It was contended that on 13.2.1992 plaintiff came to the hospital with a case that a dog bite him on 8.2.1992 and that dog died two days later. The doctor suspected

rabies infection with the dog. In view of the factual position, the doctor had no other alternative, but administration of antirabies vaccination. The second defendant informed the plaintiff the precautions he had to take and prescribed the course of antirabies injections, i.e., one injection daily for 14 days and two booster injections, one on the 7th day and the other on the 14th day after the 14 injections. The second defendant used the antirabies vaccines duly supplied from the Public Health Laboratory, Thiruvananthapuram which was kept in the safe custody of the Taluk Head Quarters Hospital. The injections were administered with utmost care and caution, skill and knowledge expected of a medical Officer in a like situation. After the administration of the second booster dose on 19.3.1992 second defendant advised the plaintiff to report back if he develops any symptoms related possible delayed complication of vaccination. The allegation that second defendant treated the plaintiff without sufficient care was denied. On 18.4.1992 plaintiff came and told the second defendant that he was having some difficulties and also feel some difficulty in walking. The plaintiff did not comply with the instructions given to him. The plaintiff was consuming

alcohol, going to bed very late every day and doing heavy work. The symptoms reported by the plaintiff was very mild and the second defendant advised the plaintiff to take neurotropic vitamins and also told him to report if there was any change in the symptoms. The plaintiff never returned to the second defendant. The second defendant was not aware of the admission of the plaintiff in the Sanker's hospital and Medical College Hospital. The second defendant was not liable or responsible for developing any symptoms while the plaintiff was undergoing treatment in the Sanker's hospital or Medical College Hospital. As per the internationally recognised Medical Authorities, if there is any side effect due to the injections, paralysis became apparent between 7th and 27th day of the injections and almost always within 35 days after the commencement of the antirabies treatment. During the course of treatment plaintiff never made any complaint within the dates stated above and the plaintiff met again the second defendant only on 18.4.1992. It was contended that being a Government hospital second defendant administered the medicines supplied to the hospital from the Public Health Laboratory, Thiruvananthapuram and in the course of

performing vaccination if there any symptom of reaction develops, the doctor has to stop vaccination. In plaintiff's case no such symptoms developed during the course of treatment. After 18.4.1992 plaintiff was not under the care and treatment of the second defendant and he was not liable for any damages sustained by the plaintiff thereafter. In case the dog dies within 10 days the person sustaining dog bites should receive complete course of antirabies vaccine. There is no test by which one can detect the individual who is likely to develop such delayed allergic reactions. The risk of developing complications at the rate of 1.2 to 3.4 per one lakh is not a justification for denying the benefit of antirabies vaccination. The quantum of compensation claimed was disputed.

6. Plaintiff gave oral evidence as P.W.1 and examined P.Ws.2 to 6. Exhibits A1 to A10 were proved and marked. Exhibits X1 to X2 were also marked. On the side of defendants, second defendant was examined as D.W.1.

7. Learned Sub Judge found that there was negligence on the part of the second defendant. It was also found that the plaintiff was entitled to get a compensation of Rs.70,000/-

with 12% interest. A decree was passed making all the defendants jointly and severally liable.

8. Challenging that part of the decree by which the court below found that the second defendant was negligent, the second defendant filed A.S. No.30 of 2001. Dissatisfied with the quantum of compensation awarded by the court below, plaintiff filed A.S. No.296 of 2001.

9. The following points arise for consideration:

(1) Whether the finding of the court below that there was negligence on the part of the second defendant, who is the appellant in A.S. No.30 of 2001, is correct?

(2) Whether the plaintiff is entitled to get additional compensation and if so, the quantum?

10. Shri V.Chitambaresh, learned counsel appearing for the second defendant has argued that during the course of treatment plaintiff never raised a complaint of any symptom. He came and met the second defendant after the completion of the treatment on the 65th day from the starting of the injections. It is argued that second booster injection was administered on 19.3.1992 and plaintiff came back to met the second defendant only on 18.4.1992. It was argued that

plaintiff met the second defendant only once and after examining the plaintiff second defendant suggested him to take neurotropic vitamins and thereafter plaintiff never reported before the second defendant. It is argued that going by the pleadings there is absolutely nothing on record to show that there was any negligence on the part of the second defendant. Learned counsel for the second defendant referred to a number of decisions and also the authorities on the point in support of his argument. Learned counsel appearing for the plaintiff has argued that the evidence on record proves the negligence of the second defendant. It is argued that in spite of complaints made by the plaintiff, the second defendant only prescribed vitamin tablets and did not conduct any test or prescribed medicines.

11. There are certain admitted or proved facts. Exhibit A1 is the prescription admittedly written and issued by the second defendant. It shows that on 13.2.1992 plaintiff consulted the second defendant and told him that just few days back a dog bite him and the dog subsequently died. The second defendant advised him to take 16 antirabies injections; 14 injections at a stretch, one each every day and two booster

injections, one on the 7th day and the other on the 14th day of the completion of the 14 injections. In Exhibit A1, the advice given by the second defendant was also recorded. What exactly was the advice written in Exhibit A1 was not explained either by the plaintiff or by the second defendant. The second defendant had stated that he advised the plaintiff that he shall not consume alcohol, shall do only light work and shall avoid late night. Exhibit X2 case record maintained by the Medical College Hospital also shows that plaintiff was in the habit of consuming liquor though he told the doctor that he stopped consumption of alcohol after starting treatment by the second defendant. The fact that the second defendant gave proper advice to the plaintiff at the time of starting treatment is established in the case. Second booster injection was administered to the plaintiff on 19.3.1992. There was absolutely nothing on record to show that between 13.2.1992 and 19.3.1992 plaintiff made any complaint regarding any difficulties in walking, numbness to both legs, difficulty in passing urine, etc. Subsequently the plaintiff met the second defendant only on 18.4.1992. Exhibit A10 is the prescription issued by the second defendant on 18.4.1992. It shows that

the only complaint made by the plaintiff to the second defendant was numbness to legs which developed five days prior to 18.4.1992. Second defendant advised him to take two Neurobion tablets daily for a month. According to the second defendant he advised the plaintiff to report in case any symptom develops. Exhibit A2 is the reference letter issued by Sanker's hospital dated 3.6.1992. In Exhibit A2 also it was stated that plaintiff was admitted in that hospital on 14.4.1992 with a history of numbness of both legs extending upto the thorax of 10 days duration. So even before the doctor who examined the plaintiff at Sanker's hospital on 24.4.1992 the statement made by the plaintiff was that the symptoms developed only 10 days prior to 24.4.1992. It is to be noted that the plaintiff went to Sanker's hospital six days after his consultation with the second defendant. In Exhibit A10 it was stated that the symptoms developed only five days prior to that date. So the material produced by the plaintiff himself shows that he developed the symptoms of side effect of the antirabies vaccination, if any, only five days prior to 18.4.1992. In Exhibit X2 also it is stated that 20 days after the last booster injection the plaintiff noticed numbness of the

legs simultaneously. Exhibits A2, A10 and X2 show that during the course of treatment, plaintiff did not develop any symptom of any complication at all. So the plaintiff's case that the second defendant treated him with negligence is disproved by the documents produced by the plaintiff himself. The only other question arising for consideration is whether the second defendant exercised the skill of a competent man exercising that particular art when the plaintiff consulted him on 18.4.1992. In the written statement filed by the second defendant it was stated that the medicines administered to the plaintiff was supplied by the Public Health Laboratory which was kept in the safe custody of the hospital. The case of the plaintiff was that when he reported complications, the second defendant should have administered other antirabies vaccine and conducted various tests. There is nothing on record to show that at the relevant time any other antirabies vaccine was available in the Taluk Head Quarters Hospital. The plaintiff has no case that a Government doctor can insist a patient to purchase medicine from open market while undergoing treatment in a Government hospital when medicine supplied by the Government is available. Exhibit A1

prescription itself shows that plaintiff himself told the second defendant that the dog that bite him died subsequently. If symptoms of rabies develop thereafter there is no treatment and it is a case of 100% mortality. So if a person is bitten by a stray dog the only treatment available is to administer antirabies vaccination. In this case the medicines administered by the second defendant was taken from the safe custody of the hospital which was supplied by the Public Health Laboratory.

12. Learned counsel for the second defendant had made available a book by name 'RABIES AND ITS PREVENTION" with detailed instructions for the guidance of medical and veterinary officers responsible for the administration of antirabies treatment (Reprint) by Dr.N.Veeraraghavan, M.B.B.S. D.Sc. Director, Pasteur Institute of Southern India. In pages 21 and 22 of the Book, the author has dealt with the reactions due to vaccine therapy. The author has classified reactions into two; (A) Benign Reactions and (B) Severe Reactions. Neuroparalytic accident is a severe reaction. In page 22 of the Book it is stated as follows:

"B. SEVERE REACTIONS
There is only one serious sequela of

> **antirabies treatment, namely post-treatment paralysis (neuroparalytic accident). The extreme rarity of this condition may be judged from the fact that, among 5,35,021 patients treated with 5 per cent Semple vaccine supplied from this Institute during the years 1933-70, only 46 patients developed post-treatment complications giving a rate of incidence of 1 in 11,630. It is, therefore, obvious that the remote possibility of the development of neuroparalytic accident cannot be considered as a contra-indication to treatment.**
>
> **In the majority of cases paralysis becomes apparent between 7th and 27th day and almost always within 35 days after the commencement of treatment ".**

The author has also discussed the treatment of neuroparalytic accidents at page 23 of the book.

13. Counsel for the second defendant has made available copy of a text book of "PREVENTIVE AND SOCIAL MEDICINE" by Dr.K. Park, M.B.B.S. M.S. (15th Edn.) In page 212 of the book it is stated that there is a chance of developing neuroparalytic complications. It is stated as follows:

> **"Nervous tissue vaccines contains neuroparalytic factors such as myelin. Despite prolonged treatment and the relatively large does of the vaccine involved, the majority of patients suffer no inconvenience throughout the period**

of treatment. However, in some persons, the following complications are encountered.

(1) General: Headache, insomnia, giddiness, palpitation, diarrhoea.

(2) Local: Itching irritation, pain, tenderness, redness and swelling at the site of injection.

(3) Allergic: Urticaria, syncope, angioneurotic oedema, anaphylatic reaction.

(4) Neuroparalysis: Post-vaccinal paralysis due to sensitization.

The Chief and the dreaded complication of vaccine treatment is neuroparalysis. It is generally accepted that the risk of CNS involvement in recipients of vaccine prepared in the brains of adult animals is about 1 in 2000 doses administered (19). Persons previously vaccinated are more prone to it.

Neuroparalysis is heralded by the onset of certain prodromal symptoms such lever, malise, headache, pain or stiffness in the neck or limbs. This complication rarely occurs before the sixth or seventh injection of the vaccine in those receiving it for the first time. Further injections should be stopped at the first indication of prodromal symptoms and the case should be watched closely. The onset of the condition is always within 30 days (88%

> of cases being within 20 days). This condition may result in serious residual paralysis or death. The etiology is not clear. The case management consists of strict bed-rest, administration of cortico-steroids, anti-neuritic vitamins, bladder and bowel care and general care of the patient".

The Book also deals with the advice given to the patients. It is stated as follows:

> "All patients undergoing antirabic treatment should be advised as follows: (a) they should abstain from alcohol during and a month after completion of antirabic treatment since it may precipitate paralytic accidents or facilitate lighting up the infection. (b) undue physical and mental strain and late nights should be avoided. (c) cortico-steroids and other immunosuppressive agents should not used. (d) rabies may develop following inadequate immunization"

14. Counsel for the second defendant has also made available an Article written by Shankar S.K., Madhusudana SN and Satyanarayana Swamy H. on "Pathological morbidity following Semple type antirabies vaccine in India". It is stated as follows:

> "Majority of the people exposed to bite of a dog, rabid or otherwise in India and other developing countries receive Semple vaccine and cases of

> **neuroparalytic reactions still continue to occur. The incidence of the complications is reported to be 1:220 in Thailand while Vejjavija and Thongcharoen reported incidence of 1:2700 from the same country. In India it varies from 1:5000 to 1:10,000. It is also stated that these complications are usually seen after 5-6 injections of Semple vaccine and the clinical manifestations may vary from mild neuritis without functional deficit to severe radiculopathy" ..... "In India Semple vaccine has been in use for the last 90 years. It is stated that the exact incidence of neuroparalytic complication is not known because of poor record keeping and lack of proper feed back from the clinics especially in Government hospitals which use the maximum amount of this vaccine at the outpatient services" ..... "The Semple vaccine consisting of 14 primary injections and two boosters will cost around Rs.60/- Rs.70/- while primary chick embryo fibroblast tissue culture vaccine (five doses) and the purified Vero Cell Rabies Vaccine in India costs Rs.1300 and the human diploid Cell Vaccine (five doses) costs approximately Rs.3,500/-".**

15. Learned counsel for the second defendant made available another Article on "Human vaccine prepared in animal brains". It is stated that in India Sheep-brain based Semple vaccine has been used for the last 90 years and in India 40 million ml. of this vaccine are produced to treat at

least 5,00,000 persons each year. It is also stated that "the reported rate of neuroparalytic complications following the use of this vaccine varies from 1:600 to 1:1575 administrations, and 20-25% of these lead to death. The exact incidence of neuroparalytic complications throughout India or other countries in the area is not known. However, in the State of Karnataka, India, 112 cases of neuroparalytic accidents were admitted in the past 20 years following Semple vaccine administration".

16. So authorities on the point make it clear that sheep brain based Semple Vaccine is the cheapest medicine available and the same is manufactured by Governmental agency and supplied to Government hospitals. Whatever may be the care a Doctor takes, there is a possibility of the patient developing neuroparalytic complications, though very rarely. Normally such complications will develop between the 7th and 27th day and almost always within 35 days after the commencement of the treatment. There is no method to administer a test dose to find out whether the patient will develop any side effect. Even now if a person approaches a doctor with a history of dog bite, the only course open to the

doctor is to administer antirabies injections and Semple vaccine is the cheapest. In India for the last 90 years that vaccine is used.

17. Plaintiff consulted the second defendant on 13.2.1992 and antirabies injection started on that day itself. The last injection was administered on 29.2.1992. One week thereafter first booster injection was administered and on 19.3.1992 second booster injection was administered. During the course of treatment no symptom of neuroparalytic complications developed. He developed the symptom on the 12th or 13th April, 1992. He came and met the second defendant only on 18.4.1992. On that day the second defendant prescribed Neurobion tablets. According to the plaintiff the second defendant should have administered to him more sophisticated or advanced medicine on 18.4.1992 itself. It is an admitted fact that after 18.4.1992 plaintiff did not meet the second defendant. On 24.4.1992 plaintiff got himself admitted in the Sanker's hospital. He was treated in that hospital till 3.6.1992. So the best evidence would have been the case records of the plaintiff kept in the Sanker's hospital. If as a matter of fact before finding fault with the

second defendant for not giving proper treatment, the court below should have considered what exactly was the treatment given in Sanker's hospital from 24.4.1992 onwards. For that there is absolutely no material. Admittedly the plaintiff was treated by one Dr.Ganga. She was not cited as a witness. Though the suit was filed in the year 1993 summons was issued to Sanker's hospital to produce the case records of the plaintiff only in the year 1998. Initially summons issued to P.W.3, who was a doctor working in Sanker's hospital, was returned noting that nobody was working there with the designation shown in the summons. Subsequently, another summons was issued. Thereafter only P.W.3 filed an affidavit to the effect that the medical records called for by the court were not available since all such records prior to 1994 had been destroyed. If the records were not available, whatever may be the designation shown in the summons, P.W.3 should have appeared before the court and filed an affidavit. But he refused to accept summons on a technical ground. The contention of P.W.3 is highly suspicious. Exhibit A2 is the letter written by the doctor who treated the plaintiff in the Sanker's hospital. It will not show what exactly was the

medicines administered on the date of admission and tests conducted on the plaintiff. Exhibit A5 is the ECG result of the plaintiff conducted at Sanker's hospital. It would show that the plaintiff was subjected to that test only on 14.5.1992. Exhibit A6 is the X-ray of the plaintiff taken on 13.5.1992 as advised by Dr.Shyamaprasad of Sanker's hospital. So the materials produced by the plaintiff show that no advanced and sophisticated tests were conducted in Sanker's hospital on the date of admission. Without comparing the medicines administered and tests conducted in the Sanker's hospital immediately, it is not possible to find fault with the second defendant for not subjecting the plaintiff to any advanced and sophisticated tests. Exhibit A2 will show that at the time of admission plaintiff's pulse rate was 72/m, BP was 120/70 mHg. No abnormalities were detected. Exhibit A2 further shows that from the Sanker's hospital also plaintiff was given vitamine injections in addition to other medicines. It was further stated that the plaintiff was satisfactorily improving, but his condition became worse three days prior to Exhibit A2 letter. It also shows that investigation was done by examining blood and urine. ECG and CT Scan were taken. So going by

the details in Exhibit A2 it is clear that those tests were conducted not at the admission stage. It is to be noted that from 24.4.1992 to 3.6.1992 plaintiff underwent treatment in the Sanker's hospital and from there he was referred to the Medical College Hospital. Exhibit X2 case record of the Medical College Hospital also shows that plaintiff was given treatment. The doctor had diagnosed the patient as post vaccinal demylitis (meylitis) arvdemyelination - paraplegia. A perusal of the records shows that one of drugs administered to the plaintiff from the Medical College Hospital was neurotropic vitamins.

18. It is true that plaintiff sustained post injection complications. The question arising for consideration is whether the second defendant was negligent as he did not conduct various advanced tests on 18.4.1992 itself. As I have already stated Exhibits A2, A5 and A6 show that even in Sanker's hospital no such tests were conducted immediately after admission and such tests were conducted only long after.

19. In Usha v. G.P. Namboodiri (1985 KLT 970) a Division Bench of this Court held as follows:

> **"The true test for establishing negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of it acting with ordinary care. It is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art. The doctor no doubt has a discretion in choosing treatment which he proposes to give to the patient and such discretion is relatively ampler in cases of emergency"**

In the aforesaid case a girl about 12 years sustained a fracture and treated by a doctor who put the plaster cast on the leg which was subsequently amputated. After considering the law on the point and various decisions this Court held that the fact that merely because the leg was amputated is not a ground to find negligence on the part of the doctor so as to pay compensation.

20. In Achtrao Haribhau Khodwa v. State of Maharashtra (1996) 2 SCC 634), a case where a doctor while conducting abdominal operation left a towel inside the abdomen which was subsequently detected, which resulted death of the patient, the Supreme Court took a view that the principle of Res ipsa loquitur is applicable and in that case. The Apex Court has considered the degree of care which is

expected of from a doctor. It was held as follows:

> **"A medical practitioner has various duties towards his patient and he must act with a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. This is the least which a patient expects from a doctor".**

21. In Vinitha Ashok v. Lakshmi Hospital (2001) 8 SCC 731) the Supreme Court considered what will constitute negligence. It was held as follows:

> **"A doctor will not be guilty of negligence if he has acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art and if he has acted in accordance with such practice then merely because there is a body of opinion that takes a contrary view will not make him liable for negligence". ..... "A doctor will be liable for negligence in respect of diagnosis and treatment in spite of body of professional opinion approving his conduct where it has not been established to the court's satisfaction that such opinion relied on is reasonable or responsible. If it can be demonstrated that the professional opinion is not capable of withstanding the logical analysis, the court would be entitled to hold that the body of opinion is not reasonable or responsible".**

22. So applying the test laid down by the Supreme Court as well as this Court to the facts of this case, it is not

possible to hold that the second defendant was negligent on 18.4.1992 in not subjecting the plaintiff to any sophisticated or advanced tests on that day itself. The court below has not considered any of these aspects while considering the negligence alleged against the second defendant. The facts and circumstances stated above clearly show that the court below was not justified in finding that the second defendant was negligent. That finding is to be set aside. So the appeal filed by the second defendant is to be allowed and that of the plaintiff claiming additional compensation is liable to be dismissed.

23. In the result, A.S. No.30 of 2001 filed by the second defendant is allowed. The decree and judgment passed by the court below in O.S. No.463 of 1993 is hereby set aside and the suit is dismissed. The appeal, A.S. No.296 of 2001, filed by the plaintiff is dismissed.

24. It is an unfortunate case of a victim who developed neuroparalytic complications long after undergoing antirabies vaccine treatment. Evidence on record shows that the second defendant used sheep brain Semple vaccine manufactured by the Government and supplied to the hospital. It was kept in

the safe custody of the hospital. Since complications developed on account of administration of a medicine manufactured and supplied by the Government, I am of the considered opinion that it is only just and proper to direct that Government not to collect court fee payable in the plaint and appeal filed by the plaintiff. So I direct that no court fee shall be recovered from the plaintiff either in the plaint or in the appeal.

Civil Miscellaneous Petition No.184 of 2001 in A.S. No.30 of 2001 will stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

The matter was posted for to be spoken to today.

Head both sides.

While allowing the appeal filed by the second defendant and dismissing the appeal filed by the plaintiff, I had observed that court fee need not be collected from the plaintiff in the suit and in A.S. No.296 of 2001. Such a direction happened

to be issued on account of an inadvertent omission to note that the plaintiff had already levied and paid the court fee payable on the plaint and as well as in the appeal memorandum. It is brought to my notice that in the suit as well as in the appeal plaintiff had paid the entire court fee. So there is no question of any collection of court fee arises in these matters. The court fee once collected can only be refunded, that too, in accordance with the provisions contained in Section 69 of the Court Fess Act. So, that part of the judgment by which I have directed the Government not to collect court fee requires review and modification. The last part of the judgment starting with the sentence "Since the complications developed on account of administration of a medicine manufactured and supplied by the Government, I am of the considered opinion that it is only just and proper to direct the Government not to collect court fee payable in the plaint and appeal filed by the plaintiff. So, I direct that no court fee shall be recovered from the plaintiff either in the plaint or in the appeal" is reviewed. The last part of the judgment will read as follows: "The complications developed on account of administration of a medicine manufactured and

supplied by the Government". But that alone is not a ground to direct the second defendant to pay compensation.

K. PADMANABHAN NAIR, JUDGE.

vsv
3rd October, 2007

K. PADMANABHAN NAIR, J.

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A.S. NO. 30 OF 2001
AND
A.S. NO. 296 OF 2001

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J U D G M E N T

17TH AUGUST, 2007